

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN JIM SHOCKLEY**, on February 21, 2003 at 7 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Jim Shockley, Chairman (R)
Rep. Paul Clark, Vice Chairman (D)
Rep. Jeff Laszloffy, Vice Chairman (R)
Rep. George Everett (R)
Rep. Tom Facey (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Christopher Harris (D)
Rep. Michael Lange (R)
Rep. Bruce Malcolm (R)
Rep. Brad Newman (D)
Rep. Mark Noennig (R)
Rep. John Parker (D)
Rep. Holly Raser (D)
Rep. Diane Rice (R)
Rep. Scott Sales (R)
Rep. Ron Stoker (R)
Rep. Bill Thomas (R)

Members Excused: None.

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Lisa Swanson, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 497, 2/7/2003; HB 660, 2/7/2003;
HB 506, 2/4/2003; HB 510, 2/5/2003;
HB 663, 2/7/2003; HB 667, 2/7/2003

Executive Action: HB 693; HB 529; HB 127; HB 460; HB 506; HB 660; HB 460

EXECUTIVE ACTION ON HB 693

Motion/Vote: REP. RICE moved that HB 693 DO PASS. Motion DO PASS HB 693 carried 10-6, (members present) by voice vote, with REPS. GALLUS, SHOCKLEY, HARRIS, SALES, GUTSCHE and Malcolm voting No.

EXECUTIVE ACTION ON HB 529

Motion: REP. HARRIS moved that HB 529 DO PASS.

Discussion:

The Committee discussed this bill brought forth by REPS. KAUFMAN and JAYNE. REP. RICE stated that each person deals with this tragedy in a different way. She stated that two families in her district both had daughters murdered by the same man. She emphasized that each family has dealt with their loss in opposite ways. One family is opposed to, the other for, the death penalty. She felt that the death penalty is important for people who need this justice and retribution. REP. RICE stated she is very clear that the death penalty is necessary for victims families to have resolution.

REP. CLARK stated that the death penalty is not just about the victims--that there are grave inequities in its execution. He emphasized that we cannot ignore these inequities with regards to social status and race. He stressed that if one innocent person is wrongly convicted and executed, that is enough to abolish it. He stated there is a reason why so many other countries have abolished the death penalty.

{Tape: 1; Side: A; Approx. Time Counter: 1 - 120}

REP. SALES stated that he had a problem with looking at other countries as the litmus test on what the United States should do with regards to the death penalty. He traveled to Kenya, Africa where there is no death penalty but where they will shoot a person on site, without a trial, for shooting an antelope. He stated the United States cannot hold up "third world puppet dictatorships" as the beacon of freedom or forthright behavior. He felt that the death penalty does serve a purpose for justice for some individuals. He emphasized that the Department of Justice (DOJ) testified that if the family doesn't want a death sentence, they probably would not pursue it. He urged the Committee to leave the death penalty in place.

{Tape: 1; Side: A; Approx. Time Counter: 121 - 139}

REP. NEWMAN stated he supported HB 529. He felt it is applied disparately and that it puts a huge financial toll on Montana. He stressed that the biggest reason he opposed the death penalty is that it is illogical and immoral for the State to condemn the intentional taking of life yet punish that with an intentional taking of life.

{Tape: 1; Side: A; Approx. Time Counter: 140 - 170}

REP. MALCOLM asked about life without parole and whether the Governor may pardon them. **REP. NEWMAN** stated the Governor could exercise her authority under the clemency provision. **REP. GALLUS** added that they can pardon a person on death row if the sentence is death but it takes 15-20 years before execution would be carried out.

{Tape: 1; Side: A; Approx. Time Counter: 171 - 184}

REP THOMAS stated he changed his outlook on the death penalty recently. He realized his black and white nature and that he can no longer be against abortion and for the death penalty--that one has to go. He supported this bill to abolish the death penalty.

CHAIRMAN SHOCKLEY supported HB 529. He emphasized that mistakes are made, that the costs to impose the death penalty are astronomical, and he cannot condone cold-blooded murder.

REP. FACEY stated he has a knee jerk reaction of retribution when there has been a heinous offense. He stated this is a financial decision for the State.

REP. RICE added that all of the people executed in Montana were white. **REP. GALLUS** stated that Dewey Coleman was black. **REP. RICE** stated the State has the responsibility for capital punishment and it needs to remain as an option.

{Tape: 1; Side: A; Approx. Time Counter: 185 - 257}

REPS. EVERETT and **LASZLOFFY** felt the death penalty is an important solution to deal with the worst of the worst such as people who are in prison for homicide and then kill more people while in prison. **REP. LASZLOFFY** stated it is a matter of public safety. He stressed that two of the people on death row were in maximum security, locked down 23 hours a day in the most heavily guarded place within the prison, and they still managed to kill 5 more people.

{Tape: 1; Side: A; Approx. Time Counter: 258 - 308}

Vote: Motion that HB 529 DO PASS carried 11-7, by roll call vote, with REPS. EVERETT, LANGE, LASZLOFFY, STOKER, NOENNIG, RICE, and SALES voting no.

EXECUTIVE ACTION ON HB 127

Motion: REP. GALLUS moved HB 127.

Discussion:

REP. NOENNIG stated that although he did not carry the bill, he worked diligently on taking the onerous parts out. He stated that it is a good updating to make the consumer protection and unfair trade practice laws more effective and enforceable.

{Tape: 1; Side: A; Approx. Time Counter: 309 - 441}

Motion/Vote: REP. NOENNIG moved that HB 127 BE AMENDED. Motion that HB 127 BE AMENDED carried 17-1, by voice vote, with REP. SALES voting no.

Motion/Vote: REP. FACEY moved that HB 127 DO PASS AS AMENDED. Motion carried 17-1, by voice vote, with REP. SALES voting no.

EXECUTIVE ACTION ON HB 460

Motion: REP. RICE moved that HB 460 DO PASS.

Discussion:

REP. GUTSCHE handed out a letter addressed to the Committee, written by Dr. David Healow, MD., rebutting Dr. Zielinski's testimony on administering anesthesia to the fetus. Dr. Healow's letter stated that he felt it his duty to inform the Committee that none of the procedures that Dr. Zielinski testified to are performed in Montana, nor, in any other state. He emphasized that those procedures are experimental.

EXHIBIT (juh39a01)

{Tape: 1; Side: B; Approx. Time Counter: 1 - 37}

Motion: REP. RICE moved that HB 460 BE AMENDED.

Discussion:

John MacMaster explained the Rice amendment which would strike Section 9 of the bill, the criminal penalties, and Section 10, the civil remedies, and insert a civil penalty. The civil penalty would subject a physician that fails to comply with Section 4 to a \$500 fine for a first offense, and \$1000 for a second. He explained that Section 4 of the bill requires a physician to explain to a woman that the unborn child may feel pain from an abortion and to offer the woman an analgesic or anesthetic.

Vote: Motion that HB 460 BE AMENDED failed 9-9, by roll call vote, with REPS. EVERETT, HARRIS, LANGE, LASZLOFFY, MALCOLM, RICE, SALES, STOKER, and THOMAS voting aye.

{Tape: 1; Side: B; Approx. Time Counter: 38 - 110}

Motion: REP. SHOCKLEY moved that HB 460 BE AMENDED. (Shockley amendment.)

Discussion:

CHAIRMAN SHOCKLEY explained that his amendment would replace all parts of the bill stating "unborn child" to "fetus."

Motion/Vote: REP. SHOCKLEY moved HB 460. Motion failed 7-11, by roll call vote, with REPS. CLARK, FACEY, MALCOLM, NOENNIG, PARKER, RASER, and SHOCKLEY voting aye.

Motion: REP. SHOCKLEY moved that HB 460 BE AMENDED. (Shockley Amendment 2, which would strike Section 3, removing criminal and civil penalties, and inform a woman of her options.)

Discussion:

REP. GUTSCHE opposed this amendment and the bill. She stated that physicians already do tell women what they need to know. She emphasized that there is no reason to pass this bill--that there have been no serious problems or deaths since abortions became legal. She felt that the bill is punitive to physicians and women. **REP. LANGE** stated he opposed the amendment because it strikes Section 3, the criminal penalties and civil fines. **REP. THOMAS** felt there are problems with abortions in Montana. **REP. RICE** stated that striking Section 3, the part on fetal pain information, would destroy the whole point of the bill. She emphasized that a mother must be informed if there is a remote chance the unborn baby feels pain.

Motion/Vote: REP. SHOCKLEY moved that HB 460 BE AMENDED. Motion failed 8-10, by roll call vote, with REPS. LASZLOFFY, MALCOLM, NEWMAN, NOENNIG, PARKER, SHOCKLEY, STOKER, and THOMAS voting aye.

Motion/Vote: REP. GALLUS moved that HB 460 BE TABLED. Motion carried 10-8, by roll call vote, with REPS. EVERETT, LANGE, LASZLOFFY, RICE, SALES, SHOCKLEY, STOKER, and THOMAS voting no.

{Tape: 1; Side: B; Approx. Time Counter: 111 - 466}

HEARING ON HB 497

Sponsor: REP. SCOTT MENDENHALL, HD 39, Jefferson County

Opening Statement by Sponsor:

REP. MENDENHALL opened on HB 497 stating that it restricts the types of entertainment allowed in establishments licensed to sell alcohol. He felt that this bill would prohibit nudity and require a 1000 foot buffer around the establishment. He stated our society must balance rights and liberties in such a way that they do not usurp or preempt one another. He explained that this bill would separate two activities proven to have terrible consequences when combined. He emphasized that the Legislature has done this on other occasions such as drinking and driving and smoking in public places. He stated that this bill is not a tool of oppression or censorship; it just separates two combinations which have been problematic.

{Tape: 2; Side: A; Approx. Time Counter: 1 - 81}

Proponents' Testimony:

Dwayne Halverson, Townsend, supported HB 497. He stated that nude dancing degrades human beings; especially the poor and abused.

EXHIBIT (juh39a02)

Sharpie Hostler, Sharp Shack, supported HB 497. He owns a business, Sharp Shack which is close to the strip club, Teasers. He felt the strip club has caused the disintegration of the neighborhood. A woman working in his store was harassed by rowdy drunks thrown out of Teasers, looking for more girls. He felt the club has caused a lot of littering.

{Tape: 2; Side: A; Approx. Time Counter: 82 - 128}

Joe Gnerer, Whitehall, supported HB 497, stating his sister is in the strip club business and that it has destroyed her life.

{Tape: 2; Side: A; Approx. Time Counter: 129 - 252}

Cris Jones, Director of Coalition For Community Responsibility, Missoula, supported HB 497. He stated that the Moulon Rouge in Missoula has caused problems for other businesses in the neighborhood.

EXHIBIT (juh39a03)

David Ford, Minister at Church of Christ, Three Forks, supported HB 497. He was raised to leave a place better than you found it. He stated the strip club is causing problems for the people who frequent it. He counsels men who have become addicted to the club yet are ashamed of going there. He felt it has decreased property values and affects local businesses.

EXHIBIT (juh39a04)

Teresa Allen supported HB 497, stating her mother is a retired stripper and her sister and aunt are strippers. She stated that she is the picket captain at Three Forks. She submitted 403 signatures as well as pictures of the club. She stated that men urinate outside in the afternoon and strippers have bared their breasts to picketers stating, "You get a free show but everybody else has to pay." She stated numerous negative things take place in and around the club. She felt the business of stripping destroyed her family. She urged a do pass.

EXHIBIT (juh39a05)

EXHIBIT (juh39a06)

EXHIBIT (juh39a07)

William Rockwell, Townsend, supported HB 497, stating the clubs are degrading to women, treating them only as a sex objects and not as individuals with a body, a soul, and a spirit. He felt the clubs are immoral and sinful. He submitted some statistics from the Department of Corrections on sex offenses.

EXHIBIT (juh39a08)

{Tape: 2; Side: A; Approx. Time Counter: 253 - 331}

Charlotte Lewis, Concerned Citizen, Townsend, Montana, supported HB 497.

EXHIBIT (juh39a09)

Gloria Hardin, Bozeman, supported HB 497. She pickets at Teasers to protect her family. She asked the Committee to set standards for Montana's youth and pass this bill.

EXHIBIT(juh39a10)

Stuart Galgerud supported HB 497.

EXHIBIT(juh39a11)

{Tape: 2; Side: A; Approx. Time Counter: 332 - 394}

Tina Galgerud, Willow Creek, supported HB 497.

Sandra Parker, Cardwell, supported HB 497.

Christy Geisser, Townsend, supported HB 497.

Steven Geisser, Townsend, supported HB 497, stating that he and his wife have seven children and three grandchildren. He felt the Committee should set a moral standard by passing this bill.

{Tape: 2; Side: A; Approx. Time Counter: 395 - 442}

Sharon Neilson, Townsend, supported HB 497. She submitted testimony for herself and Linda Wagner of Townsend.

EXHIBIT(juh39a12)

EXHIBIT(juh39a13)

Judith Rockwell, Townsend, supported HB 497. She stated she is a concerned grandmother and urged a do pass.

EXHIBIT(juh39a14)

Robert Cooper, Three Forks, supported HB 497.

Gilda Clancy, Montana Eagle Forum, supported HB 497.

EXHIBIT(juh39a15)

Julie Gillam, Montana Family Coalition, Helena, urged a do pass on HB 497.

Jean Geyer, supported HB 497.

Laney Candelora, Montana Catholic Conference, supported HB 497.

{Tape: 2; Side: A; Approx. Time Counter: 443 - 488}

Opponents' Testimony:

Mark Staples, Montana Tavern Owners Association, Helena, opposed HB 497. He asked the rhetorical question of just what is a sexually oriented business? Brittany Spears? MTV? Christine Aguilera? Bay Watch? Victoria's Secret Catalogues? Professional Cheerleading? He stated that in 1890, a woman showing her ankle was scandalous. In the 1920's, men's and women's bathing suits were like long johns. A woman with her midriff showing, now worn as fashionable by the masses, was unheard of. He stated we recently went to war in Afghanistan where women were not allowed to reveal their faces in public.

Mr. Staples stated there are 1800 liquor licenses in Montana and only eight strip clubs in the entire State. "Hardly a proliferation." He asked the Committee if they really want the strip clubs put into juice bars where there are no age restrictions. He felt that all of the negative actions which the proponents described are already crimes. Public drunkenness, drunk driving, littering, theft, harassment, public urination, and spousal abuse are already criminal offenses which should be prosecuted. He urged a do not pass.

{Tape: 2; Side: A; Approx. Time Counter: 489 - 510}

{Tape: 2; Side: B; Approx. Time Counter: 1 - 20}

Bruce Fowler, Owner of Moulan Rouge Cabaret Club, Missoula, opposed HB 497. He stated that he has owned this club for 29 years and that he has had various types of entertainment including strip dancing. He felt that Montana has laws which regulate drinking and nude dancing. He warned that if HB 497 passed, it would separate alcohol from nude dancing, opening up a Pandora's box. He explained that by having nude dancing in bars, the activity is highly regulated. He laid out some of the State controls: the police can search the premises at any time without a warrant, you have to be a State resident, there is a large capital expense, and if you break any ordinance you can lose your liquor license. He stated a liquor license in Missoula is about \$450,000. He emphasized that he only serves people 21 years and older. He showed pictures of his establishment.

EXHIBIT (juh39a16)

Mr. Fowler then showed pictures of another establishment down the street. He warned that if HB 497 passes, you will see many more establishments like those in exhibits 17 and 18.

EXHIBIT(juh39a17)

EXHIBIT(juh39a18)

He submitted a petition with 190 signatures and stated he already turned in another petition with 322 people and 222 of those signatures were women. He stated in 29 years he has never been cited by any city, county, or liquor licence bureau for any wrongdoing.

EXHIBIT(juh39a19)

{Tape: 2; Side: B; Approx. Time Counter: 21 - 48}

Jo Krieg, Owner of Fred's Lounge, opposed HB 497. She stated she is an on-site owner and manager who treats her club like her home. In 2002 she mailed 113 W2's and 8 1099's. She works with a professional accountant and her club is under the watch of 15 Agencies, including but not limited to, the IRS, the Federal Department of Alcohol, Tobacco, and Firearms, the Montana Department of Revenue for payroll and income taxes, the Department of Revenue for registration and liquor licensing, the Montana Department of Justice, and the Gambling Control Division. She exclaimed that the County Sheriff's Deputies walk through her club every night. In the 20 years, no crimes have occurred on her premises.

EXHIBIT(juh39a20)

{Tape: 2; Side: B; Approx. Time Counter: 49 - 94}

Virginia Clark, Owner of Sage Brush Sams, Butte, opposed HB 497. She stated they only allow people 21 years of age and older into the club. She owns a gambling and a liquor license which entailed a grueling three hour interview with the Department of Justice. She stated she knows the consequences of breaking the law. She urged the Committee to not pass HB 497.

EXHIBIT(juh39a21)

EXHIBIT(juh39a22)

{Tape: 2; Side: B; Approx. Time Counter: 100 - 105}

Erin Joseph, opposed HB 497. She asked a rhetorical question about who regulates juice in Montana and if HB 497 passes, can anyone can open a strip club? She stated HB 497 is an attack on personal rights and legal businesses which generate revenue for Montana families. She urged the Committee to kill HB 497.

{Tape: 2; Side: B; Approx. Time Counter: 106 - 123}

Tricia McDowell, Billings, opposed HB 497. She stated she has been in the business for six years by her own free will. She emphasized that customers who frequent the club do so because they want to be there.

James Healow, Owner of Desperados, Billings, opposed HB 497. His wife also owns an adult club in Missoula: Planet Lockwood. He stated that he brings about 10 strip acts a year to his club and they are his busiest nights. He stated that he hit "nude" on the search engine, "Google," and received 49 million hits. He stressed that the two most popular beer commercials involve bikini-clad women who are mud wrestling. He stated that sex sells alcohol in the media and he does the same in his club. He has strict dancer/customer rules in his club which juice bars would not have.

EXHIBIT (juh39a23)

{Tape: 2; Side: B; Approx. Time Counter: 124 - 214}

David Hanson, Owner of Teasers, Three Forks, opposed HB 497. He stated that his business is controversial and he did not realize his outdoor advertisement was causing such a stir. Until last Thursday, he has never had one complaint. He stated it was never his intent to offend anyone and he is having the sign with the naked lady holding a champagne glass removed and replaced with a dinner special. He urged the Committee to oppose this bill.

EXHIBIT (juh39a24)

{Tape: 2; Side: B; Approx. Time Counter: 215 - 242}

Jackie Lenmark, Coalition for Privacy and Free Expression (Coalition), opposed HB 497. She stated that this organization encompasses a group of small businesses in entertainment, book stores, video stores, and artists. She stated that this bill is overly broad and could have unintended consequences. She feared it could extend to regular dancing, the average cocktail waitress, and musical ensembles.

{Tape: 2; Side: B; Approx. Time Counter: 243 - 265}

Beth Brenneman, Legal Director, ACLU, opposed HB 497. She stated that the relevant U.S. Supreme Court case is City of Erie requires that you cannot regulate public nudity in one specific instance and not all others. She felt this bill would have unintended consequences. For example, a play in Missoula, Grease, could be outlawed because the theater sells alcohol and the play has a scene where a boy's pants are pulled down.

{Tape: 2; Side: B; Approx. Time Counter: 266 - 318}

Informational Testimony: None

Questions from Committee Members and Responses:

REP. RICE asked this bill differed from Senator Grimes's bill.

REP. MENDENHALL stated that Senator Grimes's bill failed on the third reading and this bill separates alcohol and nude dancing.

REP. STOKER asked Harris Himes where other states stand on this issue of nudity. **Mr. Himes** responded that City of Eerie, a 2000 case, is very broad in scope and protects the City's ordinance. He stated that public place includes all places open to the public including taverns, dance halls, banquet halls, party rooms, or halls restricted to adults, whether or not admission is charged. He stated it is not unconstitutional or discriminatory to limit it to one of these areas.

He talked about the O'Brian test and whether the government regulation is within the constitutional power of the government to enact. He stated that the City of Eerie was clearly within its police powers when it regulated public health and safety. Another factor is whether the regulation furthers an important or substantial government interest. He concluded that regulating strip clubs and their secondary effects is undeniably important.

REP. CLARK stated HB 497 is the second bill this session which removes an activity from a licensed establishment thereby affecting the owner. He posed whether this bill would constitute a taking. **REP. MENDENHALL** responded that he doesn't think it is a taking because it would separate alcohol and nude dancing but not prohibit either one.

{Tape: 2; Side: B; Approx. Time Counter: 319 - 469}

REP. CLARK asked Mr. Staples whether he thought this bill constituted a taking. **Mr. Staples** responded that it could be. He stated Montana has not had the ultimate takings case but he believed it would be litigated.

{Tape: 2; Side: B; Approx. Time Counter: 470 - 500}

REP. HARRIS stated Montana already has a law on indecent exposure. **REP. MENDENHALL** responded that statute would not be applicable. **REP. HARRIS** made a rhetorical comment that **REP. MENDENHALL** must not consider nude dancing to be an act of indecent exposure.

{Tape: 3; Side: A; Approx. Time Counter: 1 - 15}

Closing by Sponsor:

REP. MENDENHALL closed on HB 497. He stated this bill would not cause a proliferation of strip clubs in juice bars. He felt that National studies show there are secondary effects from strip clubs. One opponent testified that they make a lot of money from the sale of alcohol and that they book strip acts about 10 times a year which are the busiest nights. He stated this bill is not a taking, it just separates alcohol from nude dancing.

{Tape: 3; Side: A; Approx. Time Counter: 16 - 67}

HEARING ON HB 660

Sponsor: **REP. ROSIE BUZZAS, HD 65, Missoula**

Opening Statement by Sponsor:

REP. BUZZAS opened on HB 660 stating it does two things: requires registration for the sale of kegs and increases penalties for unlawful transactions with children. She emphasized that Montana has the fourth highest rate of alcohol consumption in the Nation. She stated a survey showed that 30 percent of youths, in the past two weeks, engaged in binge drinking or drank more than five drinks in a row.

{Tape: 3; Side: A; Approx. Time Counter: 68 - 155}

Proponents' Testimony:

Bill Muhs, Mothers Against Drunk Drivers (MADD), supported HB 660. He gave statistics stating that 36 percent of kids drink by the eighth grade, and the average age is 13.1 years. He stated this is critical to youths because their brains are not yet developed. He stated Montana kids drink and drive more than most other kids. He stated that most youths do not drink at home. Most youths like keggers because they can serve a lot of people for about twenty-five cents a glass. He stated that keg registration would act as a deterrent for adults and that 20 states have passed similar laws.

{Tape: 3; Side: A; Approx. Time Counter: 156 - 212}

Mark Staples, Montana Tavern Association, supported HB 660 stating there is not a problem with on-site serving of minors. He stated he supports this bill but an element is missing; a

section is needed to inform the retailer what to do if the keg comes back without the affixed label.

{Tape: 3; Side: A; Approx. Time Counter: 213 - 230}

Peg Shea, Executive Director, Western Montana Addiction Services, supported HB 660 stating she has worked with addiction for 25 years, 13 of those in Montana. She stated Montana has six years of good data on youth consumption of drugs and alcohol. She felt that kids drink because they believe it is the "norm." She emphasized that the laws must set the standard to reduce underage use. She stressed that this is a good law and the Tavern Owners' Association support it as well.

{Tape: 3; Side: A; Approx. Time Counter: 231 - 272}

Cris Tweeten, Chief Counsel, Department of Justice (DOJ), Helena, supported HB 660.

Jim Smith, Montana County Attorney's Association, supported HB 660. He stressed it would not add a new felony, increase the prison population, or have a fiscal impact.

Roland Mena, Department of Public Health and Human Services (DPHHS), supported HB 660.

Roger Curtiss, Anaconda, supported HB 660, stating he is the director of Alcohol and Drug Counseling Services in Anaconda. He has worked in 18 different Montana counties over the past 23 years. He is the current president of the National Association of Drug and Alcohol Addiction (NADAA) which represents 200 members in Montana, 13,000 people in the U.S., and 80,000 members throughout the world.

Dan Haffey, Prevention Specialist, Butte, supported HB 660, stating he has taught MIP classes for over 20 years.

Candace Payne, Montana Beer and Wine Wholesalers, supported HB 660. **Ms. Payne** explained that she was speaking on behalf of Christy Blazer who was preoccupied at another hearing.

{Tape: 3; Side: A; Approx. Time Counter: 273 - 385}

Opponents' Testimony:

Mike Barrett, Poet, Letter Writer, Former Town Councilman, Helena, opposed HB 660.

{Tape: 3; Side: A; Approx. Time Counter: 386 - 406}

Informational Testimony:

Kimberly Delgato, Representing John Allendorf, Patrol Captain For the USDA Forest Service, appeared as an informational witness to answer any questions.

Leo Baerlocher, Department of Revenue, appeared as an informational witness to answer any questions.

{Tape: 3; Side: A; Approx. Time Counter: 407 - 470}

Questions from Committee Members and Responses:

REP. FACEY commented on Mr. Staples' suggested amendment of affixing a label on the keg: a permanent stamp. **REP. BUZZAS** stated they could work that out. **REP. FACEY** responded he would be happy to work on that amendment to the bill.

REP. CLARK asked Mr. Staples whether it would be possible to permanently mark the kegs. **Mr. Staples** responded he would look into it and get back to the Committee. **Ms. Payne** stated she would also look into it and have Christy Blazer get back to the Committee.

REP. GUTSCHE asked Mr. Muhs whether keg registration in the 20 states is working. **Mr. Muhs** responded that information would be available but that he does not have it at hand. **REP. GUTSCHE** asked about the 90-day holding requirement for retailers. **REP. BUZZAS** responded that the 20 states with keg registration laws have varying time requirements but that 90 days appeared to be a reasonable time.

Closing by Sponsor:

REP. BUZZAS closed on HB 660. She stated that she can work with the retailers on the keg labeling issue. She explained that the Department of Revenue has some money which could be allocated for the costs to label kegs. She felt this bill would keep retailers accountable if they sell to minors by imposing a fine. She stated this bill would help discourage underage drinking.

{Tape: 3; Side: B; Approx. Time Counter: 1 - 117}

HEARING ON HB 506

Sponsor: REP. RON ERICKSON, HD 64, Missoula

Opening Statement by Sponsor:

REP. ERICKSON opened on HB 506. He stated that this bill would allow the medical use of marijuana. He stated his mother had multiple sclerosis and that she needed a primary care giver. He stated that pain counts and other states recognize this. He listed California, Oregon, Washington, Alaska, Hawaii, Nevada, Arizona, Colorado, and Maine as states having provisions in law for medical marijuana. He stated that other states are working on legislation to allow medical marijuana such as Vermont, Connecticut, Maryland, and New Mexico.

He stated that Page 1, Lines 20-22, explain the bill's intent: "to allow Montanans, suffering from debilitating medical conditions, to use small amounts of cannabis without fear of civil or criminal penalties." The physician must write a letter advising the use of marijuana, and all other reasonable restrictions must be met regarding that use. He explained "debilitating medical conditions" as including cancer, glaucoma, acquired immune deficiency syndrome, severe or chronic pain, and multiple sclerosis.

He stated that the Department of Public Health and Human Services (DPHHS) will implement the program. He emphasized that anyone who engages in the program will get a card through DPHHS. He stated medical use would limit the amount a person can possess or grow. (One ounce of possession or 15 plants if growing it.) He emphasized that a person cannot drive under the influence nor deliver it to another.

{Tape: 3; Side: B; Approx. Time Counter: 86 - 291}

Proponents' Testimony:

Dr. Ethan Russo, Board Certified Child and Adult Neurologist, Montana, supported HB 506. He stated he is the editor of two books: Cannabis and Cannabinoids, Pharmacology, Toxicology, and Therapeutic Potential, and Cannabis Therapeutics and HIV Aids. He stated he is also the editor of The Journal Of Cannabis Therapeutics.

He spoke about the history of cannabis and why it needs to be available to Montanans. The cannabis prohibition is 65 years old and should now be retired. He stated that it has been used as ancient medicine for at least five thousand years to prevent feeble-mindedness, pain in childbirth, and miscarriage, as a pain killer, and for anxiety. Dioscorides, a famous physician, used cannabis for pain in the ears. He explained that in Sumeria and Akkadia, 2200 BCE, 29 citations of medical use of cannabis were

found in Assyrian stone tablets. The tablets attested to marijuana's analgesic and psychogenic effects with internal use for depression and staying the menses. He stated that William O'Shaugnessy, an Irish physician in India around 1839, discovered the healing qualities of Indian hemp. Although people died from rabies, the use of marijuana made their passage to death much easier. People have survived cholera and tetanus from the use of medical marijuana. He stated Sir John Russel Reynolds served as Queen Victoria's physician and documented that she used marijuana on a monthly basis for migraines and menses. He stated that Sir William Osler, is considered the father of American medicine. Sir Osler recommended marijuana, in 1915, as the best treatment for migraines, over and above aspirins and ergotomy.

He was not sure why the Montana Medical Association (MMA) opposed this bill. He stated he is a member of the MMA and was not polled. He stated that marijuana is much less addictive than cigarettes, alcohol, or other drugs. He stated that cannabis can be used in pill form, smoked or inhaled and it improves sleep. He closed stating it will be legal in Great Britain within one year.

EXHIBIT (juh39a25)

EXHIBIT (juh39a26)

EXHIBIT (juh39a27)

{Tape: 3; Side: B; Approx. Time Counter: 292 - 470}

Karen Nelson, Certified Care Nurse and HMO, supported HB 506. She stated she is a nurse and has worked with terminally ill patients who have used marijuana for medical reasons. She explained that marijuana cuts down on opioids, helps with nausea, and increases appetites for aids and cancer patients. She urged a do pass on HB 506 to help terminally ill people.

EXHIBIT (juh39a28)

EXHIBIT (juh39a29)

EXHIBIT (juh39a30)

EXHIBIT (juh39a31)

EXHIBIT (juh39a32)

{Tape: 4; Side: A; Approx. Time Counter: 73 - 101}

Gale Holzer, Rancher, Central Montana, supported HB 506. He is 49 years old and was in a bad accident requiring him to take two epilepsy drugs. He stated that these are heavy narcotics with bad side effects. He stated he would much rather use marijuana. He emphasized that only healthy people are opposing this bill.

{Tape: 4; Side: B; Approx. Time Counter: 102 - 176}

Larry Rathom, Glendive, supported HB 506. He served twice in Viet Nam and returned in 1971. He suffers from multiple sclerosis which has forced him to live in a wheelchair. He has used marijuana for his condition, stating it helped him a lot. He praised its medical value. He stated he recently got out of Deer Lodge for growing marijuana where he served 22 months. He stated that physicians in Montana cannot prescribe marijuana. He felt that the marijuana issue should be taken out of the judicial system and put back into the physician's hands.

{Tape: 4; Side: B; Approx. Time Counter: 177 - 264}

Robin Prosser, Missoula, supported HB 506. She stated she has been ill since she was 28 years old and has resided in Montana for the past 10 years. She uses cannabis for her condition because she is allergic to all other medications. She went on a hunger strike April 20, 2002, for 60 days. She stated that she is recognized nationally. Her daughter suffered a brain injury which marijuana could have helped with by saving some of the brain cells.

{Tape: 4; Side: B; Approx. Time Counter: 265 - 320}

John Masterson, Director of Montana NORML, supported HB 506. He stated that NORML believes that marijuana is a health, and not a criminal, issue; that the war on drugs has failed. He stated that 70 percent of Montanans believe that medical marijuana should be available for sick people. He stated that sick people should be removed from the drug war. He stated that Tim Roberts, from Libby, moved to Montana from Oregon where he was on the medical marijuana program. Mr. Roberts suffered from heroin addiction and the marijuana was helping him recover. Since he has been in Montana and unable to get marijuana legally, he has gone on methadone, a much harsher drug than marijuana.

He read a Jane Doe statement from a woman who wished to testify how marijuana helped with her cancer. She stated that the medications caused projectile vomiting and only marijuana brought her relief.

{Tape: 4; Side: B; Approx. Time Counter: 321 - 385}

Beth Brenneman, Attorney, ACLU, supported HB 506. She stated she met Larry Rathom while going to Deer Lodge for medical compliance checks. She stated that Mr. Rathom needed a lot of medical care in prison and incarceration was not a wise way to spend money or to address this problem. He had never had a criminal conviction when he was arrested for growing nine medical marijuana plants. She explained that Mr. Rathom was sentenced to two 10-year

sentences. She emphasized that not a single person, not even a guard, felt that Mr. Rathom should be in prison. She stated there are others like him in prison and she urged the Committee to think of them when voting on this bill.

{Tape: 4; Side: B; Approx. Time Counter: 386 - 424}

Adam Jones, Billings NORML, supported HB 506. He asked the Committee to recall the last time they suffered pain and how they would feel if they could not receive medicine which would help.

{Tape: 4; Side: B; Approx. Time Counter: 425 - 452}

Daniel Katra, Missoula, supported HB 506. He emphasized that cannabis is a natural herb, used as medicine, and grows in the earth.

Shawn Koninga, Havre, supported HB 506.

Dorey Ritrovato, Butte, supported HB 506, stating that at one time, we all thought the world was flat; cannabis laws are a lie. He emphasized that nobody has ever died from cannabis and that time flies when you are not in pain.

{Tape: 4; Side: B; Approx. Time Counter: 453 - 498}

Gabrielle Bernier, supported HB 506.

Opponents' Testimony:

Dr. Hollis Lefever, Glendive, opposed HB 506, stating that he represents the Montana Medical Association (MMA) and himself. He has a family practice. He stated he has suffered from glaucoma and cancer and has never prescribed cannabis. He stated that there is inner-ocular pressure causing loss of sight. He felt there are better drugs than marijuana to treat glaucoma. He stated that nausea, vomiting, and anorexia should be treated with things other than marijuana. He stated there are effective mood-elevating drugs for depression.

He stated that there are four principal problems with using marijuana. It can affect the cardiovascular system, cause extreme emotional affects, cause addictions in certain people, and it can restrict the use of better medications. He stated that marijuana is not FDA approved, is not available in standardized form, and the potency cannot be known. He stated his license would not allow him to prescribe it even if the bill passed.

EXHIBIT (juh39a33)

{Tape: 4; Side: B; Approx. Time Counter: 1 - 83}

Informational Testimony:

Mike Barrett, Poet, Letter Writer, Helena.

Questions from Committee Members and Responses:

REP. GUTSCHE asked Dr. Russo about Dr. Lefever's comments on the medical effects marijuana has on the cardiovascular system. **Dr. Russo** responded that cardiac risks from cannabis are extremely rare. He stated that the medical benefits from cannabis are great for people with no other alternatives and has proven to be more beneficial than many prescription drugs. **REP. GUTSCHE** commented that the Montana Medical Association did not support the bill. She asked whether medical professions in other states support medical marijuana. **Dr. Russo** responded many medical associations around the Country support the use of medical marijuana. *The New England Journal of Medicine* wrote an article on the use of cannabis and the California Medical Association wrote a paper for physicians recommending when to prescribe it. He stated only the federal government is lagging behind in supporting the medical benefits for people in need.

{Tape: 4; Side: B; Approx. Time Counter: 84 - 172}

REP. HARRIS asked about treating feeble-mindedness with marijuana. **Dr. Russo** commented that it has been successfully used to calm Alzheimer patients and improve their behavior. Cannabis is much more than just THC.

{Tape: 4; Side: B; Approx. Time Counter: 173 - 192}

Closing by Sponsor:

REP. ERICKSON closed on HB 506, stating that pain counts. He stated that 80 percent of the people in the United States and 70 percent of Montanans are for this legislation.

{Tape: 4; Side: B; Approx. Time Counter: 193 - 202}

Sponsor: REP. PAUL CLARK, HD 72, Trout Creek

Opening Statement by Sponsor:

REP. CLARK opened on HB 510. He explained this bill would abolish incarceration for drug possession and substitute house arrest and other alternatives, to imprisonment. He stated he has worked with many chemically dependent kids, not one of whom has benefitted from incarceration. He explained the focus of the bill deals with treatment but that there are some technical issues requiring an amendment.

Proponents' Testimony:

Alvin J. Bronstein, National Prison Project, ACLU, supported HB 510. He stated Montana is increasingly enacting the most expensive penalties, incarceration, for drug offenses. He explained that in the last two years, 11 states have reduced their prison populations and Montana has increased its population by more than 7 percent in the last year. Montana is one of the top states in the rate of incarceration and almost leads the nation in the number of women it incarcerates. The ABA's Committee on Corrections passed a resolution recommending that states consider alternatives to incarceration for non-violent offenders.

{Tape: 4; Side: B; Approx. Time Counter: 203 - 317}

John Masterson, supported HB 510. He stated that the penalty should not be harsher than the drug.

Adam Jones, Billings NORML, supported HB 510. He stated that there are more drugs in jail than out of jail. He stated that incarceration for drugs causes loss of hope.

Opponents' Testimony:

Jim Smith, Montana County Attorneys Association, Helena, opposed HB 510, but may consider supporting the bill if it is amended.

Mike Barrett, Helena, opposed HB 510.

Informational Testimony:

Cris Chichton, Attorney, ACLU, stated that currently, aside from MSP, there are no drug treatment programs in the prisons.

Questions from Committee Members and Responses: None

Closing by Sponsor:

REP. CLARK closed on HB 510.

HEARING ON HB 663

Sponsor: REP. JESSIE LASZLOVICH, HD 57, Annaconda

Opening Statement by Sponsor:

REP. LASZLOVICH opened on HB 663 stating he brought the bill forth on behalf of the Department of Justice (DOJ). He explained that this bill would address how the Attorney General's (AG) office deals with tobacco settlement money. The AG's office has been having trouble enforcing Montana's current statutes. He stated that the main points of the bill would establish an escrow fund for non-participating manufacturers (NPM's), have a certification for compliance, and have NPM's designate an agent for service.

{Tape: 4; Side: B; Approx. Time Counter: 318 - 444}

Proponents' Testimony:

Cris Tweeten, Chief Counsel, AG's Office, supported HB 663. He stated that the packet he passed out contained an explanation of the bill, an executive summary of the bill, and an explanation of three proposed amendments. He stated in 1999, the Legislature adopted the Tobacco Product Reserve Fund Law (referred to as the "escrow statute.") It required tobacco manufacturers who did not join the national settlement to make payments into an escrow fund to cover potential actions. He explained that manufacturers who sell cigarettes in Montana, but did not join the tobacco settlement, must make payments into this account. He stated that the companies own the escrow funds and may withdraw interest. However, the principal must remain for 25 years and may only be withdrawn, prior to that time, to satisfy judgments in favor of the State on claims similar to those brought against the major manufacturers in the tobacco suit.

He stressed that the AG's office and the Department of Revenue would be primarily responsible for enforcing the escrow statute with the AG's office being the primary enforcer.

{Tape: 4; Side: B; Approx. Time Counter: 445 - 512}

He stated the bill is designed to do many things but its main purpose is to keep non-compliant, NPM products off the market, and to ensure the AG's office has the information necessary to

identify NPM's if they do not comply with the escrow statute. The bill requires NPM to report annually the number and brand of cigarettes they sell in Montana. He explained they wholesalers would provide the same information which could then be cross checked.

{Tape: 5; Side: A; Approx. Time Counter: 1 - 28}

EXHIBIT (juh39a34)

Proponents:

Jerome Anderson, Attorney, Helena, supported HB 663. He stated he represented R.J. Reynolds Tobacco Company in the original action and settlement agreement. He supported the model bill as originally introduced but had a problem with Amendment 1. He felt that with some time, they could work it out. He explained that since the bill has an appropriation, it would not have to meet the transmittal deadline. He requested that the bill be held off for executive action until after transmittal in order to get the amendments worked out.

{Tape: 5; Side: A; Approx. Time Counter: 29 - 41}

Steve Wade, Phillip Morris, supported HB 663. He asked for additional time to work out the language for the same reasons given by Jerome Anderson.

Mark Staples, Montana Wholesale Distributors (wholesalers), Helena, supported HB 663. He stated that the wholesalers are all for protecting the settlement and for keeping NPM's out of Montana if they do not pay into the escrow. The wholesalers' bottom line is they want the list of whose products they can and cannot sell. He explained it gets difficult for wholesalers when one day they have a legal product on hand in their stores, then with very short warning, a product becomes contraband because the manufacturer declared bankruptcy. He stated that the wholesalers would eat the loss. He explained that the amendment would allow a grace period for wholesalers to sell the product.

{Tape: 5; Side: A; Approx. Time Counter: 42 - 66}

Mike Parker, Pennington's Candy and Tobacco Distributors, Great Falls, Bozeman, and Helena, supported HB 663. He explained the bill as written, without any amendment, would not work. He stated without the amendment, the bill would expose wholesalers and retailers to a considerable risk of loss due to confiscation and mandatory destruction of merchandise bought in good faith.

He felt that an amendment could be worked out to take care of the problems with the bill.

{Tape: 5; Side: A; Approx. Time Counter: 67 - 79}

Jim Smith, Montana Cancer, Heart, and Lung Association, supported HB 663, stating it is a good bill.

{Tape: 5; Side: A; Approx. Time Counter: 80 - 83}

Ronna Cristman, C-Store Association, supported HB 663, if amended. She explained they do not want to be placed at risk by ending up with contraband products.

Opponents' Testimony: None

Questions from Committee Members and Responses: None

Closing by Sponsor:

REP. LASZLOVICH closed on HB 663.

{Tape: 5; Side: A; Approx. Time Counter: 84 - 102}

HEARING ON HB 667

Sponsor: **REP. CHRISTOPHER HARRIS, HD 30, Bozeman**

Opening Statement by Sponsor:

REP. HARRIS opened on HB 667. He stated this bill would address a problem that currently exists regarding Ponzi schemes. He explained that current law defines Pyramid, but not Ponzi, schemes which makes it difficult to prosecute Ponzi schemes.

Proponents' Testimony:

Brenda Elias Thompson, Deputy Securities Commissioner, Montana State Auditors, supported HB 667. She stated the Auditors' Office is currently prosecuting two current cases involving Ponzi schemes.

{Tape: 5; Side: A; Approx. Time Counter: 103 - 133}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses: None

Closing by Sponsor:

REP. HARRIS closed on HB 667.

EXECUTIVE ACTION ON HB 506

Motion: **REP. FACEY** moved that HB 506 DO PASS.

Discussion:

REP. SALES opposed the bill stating that the Committee is schizophrenic for considering enacting a state law which directly conflicts with federal law. He opposed the back door method of allowing people to grow dope. **REP. FACEY** supported the bill stating he originally felt he could not support it. He explained that it is a well written bill which states you cannot drive on marijuana, there will be no pot bars, but it would allow sick people to use it. **REP. THOMAS** stated that federal law will not allow it. **REP. NOENNIG** stated that other states have gotten around federal requirements of not allowing physicians to prescribe marijuana by having physicians write a letter recommending marijuana for the patient. **REP. EVERETT** stated that his wife had chemotherapy and was prescribed marinol which did help her with the nausea and everything else. **REP. NOENNIG** stated he knew a man with colon cancer who used marijuana, when other medications did not work. The marijuana eased the man's transition during the last three weeks of his life. **REP. NOENNIG** voiced his concern about patients obtaining marijuana on the black market. **REP. LANGE** stated he was an adamant opponent before the hearing but changed his mind stating the bill is good and there is no compelling reason to deny someone medicine which could help them. **REP. FACEY** stated, just for the record, that he does not endorse recreational use of marijuana and has seen the negative effects on families. **REP. CLARK** commented on the costs of growing nine pot plants as opposed to buying a bottle of FDA approved medication. He guessed it would be a tremendous price difference. He works with kids and does not want them getting into "Dad's" medication. **REP. PARKER** stated this bill is tightly constructed, especially Section 6 where an affirmative defense would not apply. He stated he could not add more to what **REP. LANGE** so perfectly said about human suffering.

Vote: Motion that HB 506 DO PASS carried 13-5, by roll call vote, with REPS. LASZLOFFY, RICE, SALES, SHOCKLEY, and STOKER voting no.

{Tape: 5; Side: A; Approx. Time Counter: 134 - 251}

EXECUTIVE ACTION ON HB 460

Motion/Vote: REP. LASZLOFFY moved that HB 460 BE TAKEN OFF THE TABLE. Motion carried 10-6, by roll call vote, with REPS. CLARK, FACEY, GALLUS, GUTSCHE, PARKER, and RASER voting no. (REPS. NEWMAN and HARRIS stepped out.)

Motion: REP. RICE moved that HB 460 DO PASS.

Motion/Vote: REP. SHOCKLEY moved that HB 460 BE AMENDED. (Shockley Amendment) Motion carried 10-8, by roll call vote, with REPS. CLARK, FACEY, GALLUS, RASER, PARKER, GUTSCHE, HARRIS, and NEWMAN voting no.

Motion/Vote: REP. LASZLOFFY moved that HB 460 DO PASS AS AMENDED. Motion carried 10-8, by roll call vote, with REPS. CLARK, FACEY, GALLUS, GUTSCHE, HARRIS, NEWMAN, PARKER, and RASER voting no.

EXECUTIVE ACTION ON HB 660

Motion: REP. CLARK moved that HB 660 DO PASS.

Discussion:

The Committee discussed tagging the kegs, and no penalty for the retailer if the tag was tampered with. **John MacMaster** stated that he would work on the language for tagging the kegs.

Vote: Motion that HB 660 DO PASS carried 16-1, by voice vote, with REP. RICE voting no. (Rep. Laszloffy stepped out.)

ADJOURNMENT

Adjournment: 2 P.M.

REP. JIM SHOCKLEY, Chairman

LISA SWANSON, Secretary

JS/LS

EXHIBIT (juh39aad)